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In the Supreme Court of the United States

OCTOBER TERM, 1952/1953

No. 688-23

WALTER J. KOWALSKI,
Petitioner,

vs.

ALBERT B. CHANDLER, *et al.*,
Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI.

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In the Supreme Court of the United States

OCTOBER TERM, 1952.

No. 668.

WALTER J. KOWALSKI,
Petitioner,

vs.

ALBERT B. CHANDLER, *et al.*,
Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI.

A. OPINIONS BELOW.

The District Court dismissed the action without opinion. (R. 29-30.) The opinion of the Court of Appeals for the Sixth Circuit, filed February 20, 1953, has not yet been reported but is printed at R. 36-8.

B. JURISDICTION.

The judgment of the Court of Appeals for the Sixth Circuit was filed on February 20, 1953 (R. 35). The petition for certiorari was filed on March 20, 1953. Petitioner invokes the jurisdiction of this Court under Title 28, U. S. C. Secs. 1254 and 2101(c). (Pet. 10.)

C. STATUTES INVOLVED.

The pertinent parts of Sections 1 and 2 of the Sherman Act (15 U. S. C. 1, 2) and Section 4 of the Clayton Act (15 U. S. C. 15) are set forth in the petition. (Pet. 9-10.) The Complaint also alleges a violation of Section 3 of the Sherman Act. (15 U. S. C. 3; R. 2[illegible] par. 144; Pet.

3.) However, Petitioner, in what appears to be his statement of the "statutes involved" (Pet. 9-10), does not print that section; and, as hereinafter appears, no question thereunder is raised by Petitioner's alleged claim. The pertinent parts of the other statutes, which are involved, are set out below.

The pertinent part of Section 6 of the Clayton Act (15 U. S. C. 17) provides:

> "The labor of a human being is not a commodity or article of commerce."

The pertinent part of Section 20 of the Clayton Act (29 U. S. C. 52) provides:

> "And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert * * * from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; * * * nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

The pertinent parts of subsections (a) and (c) of Section 13 of the Norris-LaGuardia Act (29 U. S. C. 113(a), (c)) provide:

> "(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations

of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as defined in this section) of 'persons participating or interested' therein (as defined in this section) * * *

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

D. STATEMENT OF THE CASE.

1. The Nature and Scope of the Claims Which the Complaint Purports to State.

Petitioner is a professional baseball player who was playing, and at all times has played, in one of the lower grades of the Minor Leagues. The Complaint purports to state two *statutory* claims for recovery of treble the damages allegedly caused to Petitioner by defendants' alleged violations of Sections 1 and 2 of the Sherman Act.* As hereinafter appears, Petitioner does not allege (1) that he has ever played, or that he ever has been or is qualified to play, in the Major Leagues or in the higher classifications of Minor Leagues or (2) that he ever has been or is prevented from playing in the Mexican League, ever de-

* Ford C. Frick, William Harridge and Brooklyn National League Baseball Club, Inc. were named as defendants but were not served with process and are not parties to this action. (R. 1, 26, 29.) Albert B. Chandler, George M. Trautman and Cincinnati Baseball Club Company were served and are the Respondents in this Court. All named defendants, whether or not served with process, are hereinafter designated as "the defendants."

sired or desires to do so, or ever could have obtained or could now obtain employment in that League. Consequently Petitioner's allegations with respect to the Major Leagues, the higher classifications of Minor Leagues, and the alleged agreement with the Mexican League, which (both in number and bulk) constitute the greater part of the Complaint, are surplusage and serve only to confuse and obscure the statement of Petitioner's alleged claims. (e.g., R. 4, pars. 16-9, 23-4; R. 5-6, pars. 25-32; R. 19-20. pars. 114-120.)

(a) The first alleged claim: The gist of Petitioner's first alleged claim is that defendants have utilized a standard form of Minor League player contract to deprive Petitioner of the reasonable value of his services and of his opportunities for promotion in his calling. (R. 24, par. 144.) The first alleged claim can, we believe, be most clearly stated by summarizing, first, the alleged background facts which relate to the claim and, second, the alleged facts which constitute Petitioner's claim.

(i) *The alleged background facts which relate to the first alleged claim:* "Organized Baseball," as that term is used in the Complaint, includes the two Major Leagues and the Minor Leagues which are members of a voluntary association known as the National Association of Professional Baseball Leagues (R. 3, pars. 11-15, inc.). These Minor Leagues are classified and designated, in accordance with their respective standards of play, as AAA, AA, A, B, C and D Leagues. (R. 16-7, pars. 94-9, incl.) Petitioner alleges only that he is "capable of holding a position upon a club in Organized Baseball." (R. 2, par. 2.) Each Class A, Class B, Class C, Class D and one Class AA, League, has limited the aggregate monthly player payrolls of their respective member clubs. (R.

16-7, pars. 94-9, incl.) The obvious purpose of the foregoing over-all limitation upon the aggregate monthly player payrolls of member clubs in those Leagues is to promote equality of competition among, and to make economically feasible the operation of, the clubs of each League. There is no limit on the salary which a club may pay to an individual player.

Each of the Minor Leagues plays an annual schedule of games; and most Minor League schedules require the players to travel, and baseball equipment to be transported, interstate. "Several" unidentified Minor Leagues play inter-League or intra-League post season series. "Many" unidentified Minor League Clubs and Minor Leagues sell rights to broadcast or telecast oral or pictorial descriptions of their regular and post season games. (R. 7, par. 33; cf. R. 5, par. 27.) There is no allegation that any of the Minor Leagues or Clubs, in or for which Petitioner ever played, ever sold such rights.

The Minor Leagues use a uniform or standard form of player contract. This contract contains covenants (1) expressly granting to the employing Club (or its assignee) an option to renew the contract for another season (interchangeably described by Petitioner as "an option" or "a reserve clause" or "a right of reservation") (Pet. 4; R. 17, par. 103), (2) expressly making the contract assignable, and (3) providing for termination by the employing Club on ten days' notice. (R. 7, pars. 35-7; R. 17, pars. 101, 102.) A player, who breaches his covenant to renew for the next season may not play with semi-professional or "independent" clubs without the permission of the employing Club. (R. 17, par. 103.) From an allegation that in 1946 "several" Major League players were "blacklisted" (i.e., placed on an ineligible list) for breaching the covenants to renew in their respective player

contracts, Petitioner implies an allegation that Minor League players, who breach the covenants contained in their player contracts (including the covenant granting the employing Club an option to renew for another season), may be placed on an ineligible list. (Pet. 4; R. 18, par. 106.) It is not alleged that Petitioner was ever placed on an ineligible list or "blacklisted." On the contrary, the Complaint affirmatively shows that, at all times since he entered professional baseball, he has been regularly employed in "Organized Baseball." For brevity, the foregoing allegations, with respect to the terms of employment of players, are hereinafter designated as the "player regulations."

The terms "farming" and "farm system," as used in the Complaint, mean "the ownership of Minor League Clubs by Major League Clubs." (Pet. 4.) Such ownership is not prohibited by the agreement under which professional baseball exhibitions are given. (R. 15, par. 83.) As hereinafter appears, some of the Minor League Clubs, for which Petitioner has played, were owned by, or in the terminology of the Complaint were "farm clubs" of, Brooklyn National League Baseball Club, Inc. (an unserved defendant hereinafter called "Brooklyn" or the "Brooklyn Club").

(ii) *The alleged events which relate to or affect Petitioner.* Late in 1942 Petitioner, then a minor, signed a player contract with a Class D club. Petitioner was in military service during the 1943-5 baseball seasons and did not play for that club until the 1946 season. Thereafter Petitioner was employed by, and played for, a Class D club during the 1947 season, a Class C club during the 1948 season, Class B clubs during the 1949 season and the beginning of the 1950 season, and Class C clubs during the major part of the 1950 season and during the 1951

season. Petitioner was playing for a Class C club when the action was commenced. (R. 21-4, pars. 123-6, 137-40.)

The clubs by which plaintiff was employed, and for which he played, during the 1947-49 seasons and the beginning of the 1950 season were, it is alleged, Brooklyn "farm clubs." The clubs, by and for which Petitioner was employed during the 1946 season, the major part of the 1950 season and the 1951 season, were severally "independent clubs." (R. 21-4, pars. 123-6, 137-40.)

Petitioner's claim, that he was deprived of his opportunities for promotion as a Minor League player, is based upon two assignments of his player contract which were, it is alleged, made after the respective ends of the 1947 and 1948 baseball seasons. The pertinent facts alleged in this respect are: During Petitioner's second season in professional baseball (1947) the Petitioner played for a Class D Brooklyn "farm club" for $150 per month. (R. 21, par. 126.) Prior to the "annual draft" * at the end of 1947 Petitioner's contract was assigned to the Pueblo Class A Club, with which Petitioner contracted to play during the 1948 season for a salary of $275 per month in the event he made the Pueblo team and of $225 per month in the event he did not. (R. 21-2, pars 127-9.) While Petitioner was participating in 1948 spring training at the Brooklyn Club's training camp for Minor League players, Petitioner's contract was assigned to the Class B Asheville Club, with which Petitioner contracted to play in 1948 for $250 per month in the event he made the Asheville team and for $225 per month in the event he did not. While trying out for the Asheville Class B team dur-

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* The term "annual draft" as used in the Complaint, means the annual selection of player contracts by Clubs in Leagues of higher classification in professional baseball than is the League of the Club which then holds the contract of a player. (Pet. 5.)

ing the 1948 training season, Petitioner wrenched his ankle, which interrupted his spring training; and his contract was assigned to the Class C Three Rivers Club, for which Petitioner played during the 1948 season at a salary of $235 per month. (R. 22-3, pars. 130-4.)

Prior to the "annual draft" at the end of 1948, Petitioner's contract was assigned to the Class A Greenville Club with which he contracted to play during 1949. After participating in spring practice with the Greenville Club, his contract was assigned to the Class B Newport News Club, with which he contracted to play, and for which he played, during the 1949 season for $265 per month. (R. 23, pars. 135, 137.)

The foregoing assignment of Petitioner's contract to the Pueblo Class A Club near the end of 1947 gave Petitioner, who had then played only two years in Class D baseball, opportunities successively to try out for Class A, B and C teams and, notwithstanding an injury sustained during 1948 spring training, enabled him to advance to a Class C club with a substantial salary increase for the 1948 season. The foregoing assignment of Petitioner's contract to the Class A Greenville Club late in 1948 gave Petitioner opportunities to try out for Class A and B teams and enabled him to advance to a Class B club with a further salary increase for the 1949 season. Nevertheless, Petitioner alleges, in substance, that the foregoing assignments to the Class A Pueblo and Greenville Clubs, respectively, deprived Petitioner of his opportunities for professional promotion for the 1948 and 1949 seasons upon the theory that, but for such assignments, his contract might have been selected in the 1947 "annual draft" by some other Class A, B or C club for the 1948 season and in the 1948 "annual draft" by some other Class A or B club for the 1949 season and that, had these speculative pos-

sibilities been realized, they would have afforded Petitioner opportunities to try out for, and if he made good, to obtain a place on the team of some other Class A, B or C club for the 1948 season and on the team of some other Class A or B club for the 1949 season. (R. 23, par. 136; 5-6.)

As a conclusion, Petitioner alleges that the defendants "have employed the uniform contract to deprive plaintiff (Petitioner) of the reasonable value of his services and with (sic) his opportunities for professional promotion contrary to" the Sherman Act and have thereby damaged Petitioner in the sum of $50,000. (R. 24, par. 144; R. 25, Prayer for Relief.) From the foregoing it is clear that Petitioner's damages, if any, are alleged to have been caused solely by reason of the contractual provisions hereinbefore enumerated and, for brevity, designated as the "player regulations" (*supra*, pp. 5-6) which relate solely to certain terms which the Minor League Clubs have allegedly agreed to observe in their employment of baseball players.

(b) The second alleged claim: The second alleged claim incorporates by reference the allegations of the first alleged claim (R. 25, par. 145) which include an allegation that "farming" (i.e. ownership of Minor League Clubs by Major League Clubs, Pet. 4) is not prohibited by the agreement under which professional baseball exhibitions are given. (R. 15, par. 83.) Nevertheless, Petitioner alleges that the defendants "have permitted" the unserved defendant Brooklyn Club to operate a "farm system" to its "unjust enrichment" through employment of Petitioner and prays for recovery of treble the amount by which the Brooklyn Club allegedly has been unjustly enriched. (R. 25 par. 146, Prayer.) Were this alleged statutory claim otherwise sufficient and its subject matter within

the jurisdiction of the federal courts, 15 U. S. C. 15 does not create a statutory claim in favor of anyone for recovery of treble the amount by which someone else has allegedly been "unjustly enriched" through violations of the anti-trust laws or otherwise.

2. Proceedings in the Courts Below.

In the District Court Respondents moved for an order dismissing the action upon the separate and independent grounds (1) that the District Court lacks jurisdiction over the subject matter of the action and (2) that the Complaint fails to state a claim upon which relief can be granted. (R. 26-7, 29.) The existence of jurisdiction over the subject matter did not in any way depend upon the reasonableness of the "player regulations" as between the players and employing clubs; and their reasonableness was not, and could not have been presented, upon the motion to dismiss for lack of jurisdiction over the subject matter. Even if the District Court had jurisdiction over the subject matter of the action and the Complaint had otherwise stated a claim upon which relief could be granted, the reasonableness of the "player regulations" could not have been judged upon a motion addressed to the Complaint but only upon evidence with respect to their history, purpose and result. *Chicago Board of Trade v. United States*, 246 U. S. 231, 238. Consequently, the reasonableness of the "player regulations" was not presented and was not in issue in either court below and is not in issue on the petition for certiorari.

The District Court dismissed the action upon both grounds of defendants' motion; and the Court of Appeals affirmed the order of the District Court. (Pet. 8, 10; R. 29-30, 35.)

E. QUESTION PRESENTED.

Petitioner correctly states that the *sole* question, which the Petition presents, "is whether the United States District Court has jurisdiction of the subject matter of this action." (Pet. 15.)

However, contrary to Petitioner's assertions, that question does not require, or permit, a determination of the much broader question or questions whether any activity, in which any person connected with the giving of professional baseball exhibitions engages, is subject to the federal antitrust laws (Pet. 1), or whether the District Court would have had jurisdiction over the subject matter of an entirely different action, in which the plaintiff had been damaged by the numerous alleged "activities and organization of professional baseball as set forth in" the instant Complaint. (Pet. 15.) The great bulk of "the activities and organization of professional baseball as set forth in" the instant Complaint, are not alleged to have affected or damaged the Petitioner in the case at bar. Accordingly, the only question, which the Petition presents, is whether the District Court had jurisdiction over an alleged statutory claim that Petitioner had been damaged in his business or property by the Minor League "player regulations."

The Petition presents for review only one of the grounds of the judgment below. This raises the further question whether Petitioner has any interest or standing to maintain, in this Court, a petition for issuance of a writ of certiorari.

F. REASONS ASSIGNED BY PETITIONER FOR ALLOWANCE OF THE WRIT.

In substance the reasons assigned by Petitioner for allowance of the writ are:

1. The decision of the Court of Appeals in this case is in conflict with the decision of the Court of Appeals for the Second Circuit in *Gardella v. Chandler* (1949), 172 F. 2d 402. (Pet. 16.)

2. The Court of Appeals "decided the question of the scope of the commerce clause in a way probably in conflict with the applicable decisions of this Court." (Pet. 16.)

3. The decision of the Court of Appeals is in conflict with an alleged belief of "the Congress of the United States" that "organized professional baseball is not beyond the federal jurisdiction." (Pet. 16.)

4. The decision of the Court of Appeals in this case is in conflict with an alleged belief of "the Congress of the United States" that "legislation is necessary and proper to safeguard the reasonable application of the reserve clause after the reasonableness of the reserve rules has been tested by the courts." (Pet. 16-7.)

5. "Baseball is America's national pastime"; "eight treble damage actions against various representatives of organized baseball seeking damages totaling several million dollars" are pending; and those in professional baseball state that "the great American pastime cannot continue should any of these actions (including the one at bar) be successful." (Pet. 17.)*

In the interest of brevity and clarity, we shall reply in inverse order to the first two reasons assigned by Peti-

* As we understand the petition, the material following the figure "(6)" on pages 17-20 inclusive is not intended to be, and is not, a reason assigned by Petitioner for allowance of the writ but is in the nature of a supporting brief.

tioner. After replying to the three other reasons assigned by Petitioner, we shall state briefly other propositions, each of which (except Petitioner's lack of standing to petition for review) was presented in the courts below and each of which in our opinion would also require affirmance of the judgment and a denial of the petition.

ARGUMENT.

I.

THE DECISION OF THE COURT OF APPEALS IS NOT IN CONFLICT WITH THE APPLICABLE DECISIONS OF THIS COURT.

A. The Decision Below Squarely Conforms With the Decision of this Court in Federal Baseball Club v. National League (1922), 259 U. S. 200.

The decision of the Court of Appeals strictly conforms, and any other decision would have been squarely in conflict, with the decision of this Court in *Federal Baseball Club v. National League* (1922), 259 U. S. 200 (hereinafter called the "*Federal Club* case") as clearly appears from the following analysis and comparison of that decision with the decision below. The decision of this Court in the *Federal Club* case affirmed a judgment of the Court of Appeals for the District of Columbia which reversed a judgment in favor of the plaintiff theretofore entered by the Supreme Court of the District of Columbia. (*National League v. Federal Baseball Club*, 269 Fed. 681.)

The *Federal Club* case was brought by a former member of the old Federal League (which in 1914 had commenced operation as a third Major League) against the National and American Leagues, their constituent clubs, their respective presidents and the old National Commission. (269 Fed. 682-683.) Plaintiff had sued for treble

damages upon the ground that the defendants, by combining to restrict and monopolize the supply of Major League players in alleged violation of Sections 1 and 2 of the Sherman Act, had forced the Federal League to disband and the plaintiff to cease operations with great loss. (269 Fed. 682.) Upon instructions that the defendants were engaged in interstate commerce, had attempted to monopolize and had monopolized "a part of that commerce, principally through what is called the 'reserve clause' and ineligible list features of certain agreements," the jury returned a large verdict for the plaintiff upon which the trial court entered judgment. (269 Fed. 684.)

In the *Federal Club* case, plaintiff contended that the "player regulations" which had been agreed upon and enforced by the defendants, constituted an unreasonable restraint of, or attempt to monopolize, interstate trade or commerce in violation of Sections 1 and 2 of the Sherman Act. The player regulations, to which the defendants had agreed, provided (1) that the players' contracts in both the Major and Minor Leagues shall be in one form, shall be assignable, shall be terminable by the employing club on a ten day notice to the player, shall contain a "reserve clause" or option in the employing club or its assignee to renew for the next season and shall contain a covenant not to play for any club other than the employing club or its assignee (269 Fed. 683, 687; Record 87, 91-92, 96, 103, 108, 109, 110, 112-113);* (2) that no club should negotiate with a player under contract with, or on the reserve list of, another club without the latter club's express consent (269 Fed. 683; Record 87); (3) that a player who violates his "reserve clause" or contract shall be placed on an ineligible

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*In this analysis of the *Federal Club* case, citations reading "Record _____" refer to the Record in the *Federal Club* case which was filed and printed in this Court.

list which shall be kept by the Leagues and circulated among their member clubs (269 Fed. 687; Record 90-91, 99); and (4) that a player on an ineligible list shall not play, be employed by a club in the Major or Minor Leagues or be released from his contract unless and until he shall have applied for, and shall have obtained, reinstatement. (269 Fed. 687; Record 91, 98-99.) Plainly, the "player regulations" involved in the *Federal Club* case included all of those alleged in the case at bar.

In the *Federal Club* case, the plaintiff, to support its claim that the giving of, and playing in, professional baseball games constituted interstate trade or commerce or, in the alternative, that the player regulations unreasonably restrained some line of interstate trade or commerce, relied upon the following facts: (1) Players and umpires traveled, and the clubs transported baseball equipment, from State to State; (2) the clubs purchased baseballs from national manufacturers and the American and National Leagues respectively received large sums from such manufacturers for the right to advertise their products as the "official baseball" of those respective Leagues (269 Fed. 685; Record 265-269); (3) the clubs played annual schedules of games and a World Series which required systematic and continuous travel from State to State in order to reach the places where such games were played (259 U. S, 208); and (4) the clubs of each Major League, for a substantial sum, sold to Western Union the right concurrently to transmit throughout the country play-by-play descriptions of games from each park in the Major Leagues. (269 Fed. 683; Record 118, 262, 263; Fed. Club Br.,* Sec. I, pp. 116-55; esp. pp. 122-3, 154.)

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* The abbreviation "Fed. Club Br. ____" is used to designate the brief filed in the Supreme Court by the Federal Baseball Club in the *Federal Club* case.

Plainly, no distinction exists between the facts relied upon in the *Federal Club* case, and those alleged in the instant case, unless it can be said that the effect of the sale of rights, to transmit descriptions of games interstate, depends upon the character of the medium or facility which the purchaser of such rights utilizes for the transmission of such descriptions, that is, upon the fact that today some of the purchasers of such rights transmit some of such descriptions by radio and television as well as by the electric telegraph. However, that factual difference (even if it were legally significant) does not exist in the case at bar; for *there is no allegation that the Minor Leagues or Clubs, in or for which Petitioner has played, or claims to have been qualified to play, sold rights to transmit descriptions of their games by radio or television.* (*supra*, p. 5.)

In reversing the judgment of the lower court in the *Federal Club* case, the Court of Appeals laid down the following propositions:

1. A game of baseball is inherently local from its beginning to its end. (269 Fed. 684-685.)

2. Interstate activities and transactions, in which the defendant Leagues, Clubs and their personnel also engaged, were not parts of the local game and did not convert that game into an interstate activity. (269 Fed. 684-685.)

3. Baseball games are a sport and not trade, and their inherent character as a sport is not changed when they are given for profit. (269 Fed. 685.)

4. The purpose and direct effect of the player regulations is to conserve the personnel of the clubs, to promote equality of competition and to maintain public interest in the games; and their effect, "*if any*," upon interstate commerce (e.g., the interstate activities in which the Federal League, its member clubs and their personnel had also been

engaged) was incidental and did not involve a violation of the Sherman Act. (269 Fed. 687-688.)

In holding that the player regulations, which apply to the giving of the baseball exhibitions, had not restrained or monopolized the interstate activities or commerce in which the plaintiff Club and its personnel also engaged, the Court of Appeals said:

> "This brings us to consider whether or not the restrictions, which appellee says resulted in the monopolization denounced by the statute, affected illegally the interstate features of appellee's business, that is, the movement of its players and those of the other clubs of the Federal League and their paraphernalia from place to place in the league's circuit; for it is well settled that persons not engaged in interstate commerce may be guilty of violating the statute by illegally interfering with those who are so engaged. * * *" (269 Fed. 686.)
>
> "* * * The reserve clause and the publication of the ineligible lists, together with other restrictive provisions, had the effect of deterring players from violating their contracts, and hence the Federal League and its constituent clubs, of which the appellee was one, were unable to obtain players who had contracts with the appellants; in other words, these things had the intended effect, viz. of preventing players from disregarding their obligations. On these provisions, all having for their purpose the preservation by each club of its necessary quota, and no more, of players, rests the gravamen of appellee's case. It must be obvious that the restrictions thus imposed *relate directly to the conservation of the personnel of the clubs, and did not directly affect the movement of the appellee in interstate commerce.* Whatever effect, if *any*, they had, *was incidental, and therefore did not* offend against the statute." (269 Fed. 687, 688.)*

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* In this brief all emphasis supplied unless otherwise noted.

In the unanimous opinion affirming the decision of the Court of Appeals, this Court, after stating that "The decision of the Court of Appeals went to the root of the case," said (*Federal Club v. National League*, 259 U. S. 200, 208-9):

"* * * Of course, the scheme requires constantly repeated travelling on the part of the clubs, which is provided for, controlled, and disciplined by the organizations, and this it is said, means commerce among the States. But we are of opinion that the Court of Appeals was right.

"The business is giving exhibitions of baseball, which are purely state affairs. It is true that, in order to attain for these exhibitions the great popularity that they have achieved, competitions must be arranged between clubs from different cities and states. But the fact that, in order to give the exhibitions, the Leagues must induce free persons to cross state lines, and must arrange and pay for their doing so, is not enough to change the character of the business. According to the distinction insisted upon in *Hooper v. California*, 155 U. S. 648, 655, * * * the transport is a mere incident, not the essential thing. That to which it is incident, the exhibition, although made for money, would not be called trade or commerce in the commonly accepted use of those words. As it is put by the defendants, personal effort, not related to production, is not a subject of commerce. That which in its consummation is not commerce does not become commerce among the states because the transportation that we have mentioned takes place. * * *"

"If we are right the plaintiff's business is to be described in the same way; and the restrictions by contract that prevented the plaintiff from getting players to break their bargains and the other conduct charged against the defendants were not an interference with commerce among the States." (l. c. 208-9.)

B. The Decision Below Is Not in Conflict With Any Other Decisions of This Court Cited by Petitioner.

Petitioner asserts that the decision below is in conflict with recent decisions of this Court as to "the scope of the commerce clause." (Pet. 16.) Preliminarily, we point out that the question presented does not involve a determination of the limits of congressional authority under the commerce clause but, instead, concerns only the scope of the Sherman Act. By that Act, Congress has protected interstate trade or commerce against restraint or monopolization by any means. However, intrastate activities, restraints or monopoly come within the prohibitions of that Act only when they are shown to have been intended to effect, or to have effected, a substantial restraint of some line of interstate trade or commerce. Consequently, the extent of congressional authority under the commerce clause, expressly to regulate by specific legislation, intrastate activities to protect interstate trade or commerce, is wholly irrelevant in the case at bar; and decisions, which involve statutes of that character, are wholly inapposite.

In support of the foregoing contention, Petitioner cites only *Lorain Journal v. United States*, 342 U. S. 143. (Pet. 12.) In that case, the trial court had expressly found that the defendant newspaper had formed, and was pursuing, a plan to utilize its monopoly of local advertising for the express purpose of destroying, and eliminating competition by, a new radio station. The radio station was plainly engaged in interstate commerce which would be not merely restrained but destroyed if defendant's plan were successful. (l. c. 149-50.) That case applied the long established principle, which was fully recognized and applied in the *Federal Club* case (*supra*, pp. 16-18), that an unreasonable restraint or monopolization of *inter-*

state commerce does not escape the condemnation of the Sherman Act because the means utilized to effect the restraint or monopolization of interstate commerce are local restraints or monopolies.

In the instant case, the Complaint does not allege that the player regulations were designed, intended or utilized by defendants, to affect or restrain, or have affected or restrained, the sale of rights to broadcast or telecast descriptions of games. Plainly, the player regulations here involved, which relate to the employment of players to participate in local professional baseball exhibitions in the Minor Leagues, were not intended to affect, and did not in any way affect, the sale of such rights. Moreover, the case at bar is a private action for treble damages in which the Petitioner can put in issue only the validity of those alleged restraints by which he was allegedly damaged; and there is no allegation that the alleged sales of such rights affect the Petitioner in any way. Manifestly, the *Lorain Journal* case, in which the purpose and effect of the defendants' local activities were to restrain and destroy interstate commerce by radio, is wholly inapposite.

Seemingly, although not certainly, Petitioner attempts further to support this contention by incorporating by reference the brief filed in support of a petition for certiorari in *Toolson v. New York Yankees, Inc.* (United States Supreme Court, October Term 1952, Docket No. 647), on page 22 of which four other decisions of this Court are cited in support of a like contention. (Pet. 19.) In our opinion, the brief of respondents in the *Toolson* case (pp. 16-9) shows clearly that none of those decisions overruled any principle underlying the decision of this Court in the *Federal Club* case, laid down any new principle with respect to the scope of the commerce clause, or

applied any principle in a way which conflicts with the decision of the Court below or with the decision of this Court in the *Federal Club* case.

C. No Intervening Changes Relating to the Giving of Professional Baseball Exhibitions Have Made the Federal Club Case Inapplicable to the Case at Bar.

1. The "Player Regulations."

The Complaint does not allege that the "Player Regulations" today differ substantially or in any material respect from those before this Court in the *Federal Club* case. Indeed, the Complaint alleges that the "reserve clause" and other alleged regulations have continued from the early days of baseball up to the present day. (R. 8, par. 45.) The substantial identity of the player regulations alleged in this case and those involved in the *Federal Club* case has hereinbefore been shown. (*supra*, pp. 5-6, 14-15.)

Illustratively, under the player regulations involved in the *Federal Club* case, any player who violated his contract or "reservation" (whether judicially enforceable or only an "honorary" obligation (Pet. 13), was automatically placed on an ineligible list; and if his action had been willful, could not apply for reinstatement for periods of five and three years respectively (Record 144, 269 Fed. 681, 687). Whether an option to renew or "reserve clause" in a player contract was specifically enforceable depended then, as now, upon the completeness of the option agreement and upon the existence of other facts, which are essential to *specific performance*, but are irrelevant to the *legality* of the agreement. Moreover, upon what ground could it be held that private sanctions for enforcement of a judicially *enforceable* obligation violate, but that private sanctions for the enforcement of a judicially *un-*

enforceable "honorary" obligation do not violate, the Sherman Act?

2. Interstate travel of Club personnel and transportation of baseball equipment.

Petitioner seemingly contends that interstate travel of Club personnel and transportation of player equipment are now, but at the time of the *Federal Club* decision were not regarded as, interstate commerce. (Pet. 13.) In the *Federal Club* case, as in the case at bar, the interstate travel of Club personnel and transportation of playing equipment were conceded to be interstate commerce. However, in both cases the "player regulations" did not restrain or affect such interstate commerce and did not convert the inherently local game into an interstate activity. (259 U. S. 200, 208-9; 269 Fed. 681, 686, par. 3, 687-8, par. 5; *supra*, pp. 16-18.)

3. "Farms" and the "farm system."

The Petitioner seemingly contends that the alleged development of "farm clubs" or the "farm system" in the Major Leagues since the decision in the *Federal Club* case makes that case inapplicable. (Pet. 4, 6.) Ownership of Minor League clubs by Major League clubs could not change the local activity of giving professional baseball exhibitions into an interstate activity or change it from a sport to trade or commerce. Thus, the fact that an intrastate business is carried on by a foreign corporation or its subsidiaries, does not convert the intrastate business into interstate commerce. *United States v. Yellow Cab Co.*, 332 U. S. 218, 233.

As the Petitioner alleges, the ownership by a Major League club of the stock of a corporation operating a Minor League club is not prohibited by the present Major

League Agreement. (Pet. 4; R. 15, par. 83.) Likewise, such stock ownership does not violate federal, state or common law; and its existence in no way detracts from the applicability of the *Federal Club* case to the case at bar. The allegation that the defendants other than the Brooklyn Club "permitted" the Brooklyn Club to operate a "farm system" is not only irrelevant but, in any case, could not charge Respondents with any legal wrong under the federal antitrust laws or otherwise.

4. The fact, that purchasers of rights now also utilize radio and television as well as telegraphy for transmitting descriptions of some baseball games, does not render the Federal Club case inapplicable to the case at bar.

Petitioner contends that the *Federal Club* case is inapplicable because some Clubs sell rights to transmit descriptions of their games by radio and television. This contention has no factual basis in the case at bar. The Complaint does not allege that the Minor Leagues or Clubs, in or for which Petitioner played, or claims to have been qualified to play, sold rights to broadcast or telecast descriptions of their games; nor does the Complaint allege that any activities of the defendants or of any Baseball Clubs in relation to broadcasting or telecasting descriptions of their games had any effect whatsoever on the Petitioner.

However, even if any factual basis for this contention existed in the case at bar, it would be without legal significance. The fact, that purchasers of rights to transmit descriptions of baseball games now transmit descriptions of some baseball games by radio and television as well as by telegraph, does not change or affect the inherent character of a baseball game as a local activity and as a sport and is not legally distinguishable from the sale of

rights to transmit descriptions of games by telegraph, which was urged in the *Federal Club* case as a reason for holding that the giving of professional baseball games was interstate commerce. (*Federal Club* Br. 122-3, 154.)

Long prior to the decision in the *Federal Club* case, this Court had held that interstate communication by telegraph was interstate commerce. (*Pensacola Telegraph Co. v. Western Union* (1877), 96 U. S. 1; *Leloup v. Port of Mobile* (1888), 127 U. S. 640).

As pointed out by the Court of Appeals below, "the sale of broadcasting rights for radio and television" is "not different in any essential form from the sale of the rights of descriptions of games over telegraph wires in the *Federal Baseball Club* case." (R. 37.)

Manifestly, it is the purchasers or vendees, and not the vendors, of the rights who, in broadcasting, telecasting or telegraphing such descriptions of local games, are engaged in interstate commerce. (*Fisher's Blend Station v. Tax Commission*, 297 U. S. 650, 654.) Assuming that contracts for the sale of rights are transactions in interstate commerce, that does not convert the inherently local activities of the vendor clubs in giving professional baseball exhibitions into an interstate activity or into trade instead of a sport. *Chassaniol v. City of Greenwood*, 291 U. S. 584, 587; cf. *Schechter Corp. v. United States*, 295 U. S. 495, 546-7, con. op. Cardozo, J., l. c. 554.

The fact that since the decision in the *Federal Club* case additional media for transmitting descriptions of the games to the public have become available to the purchasers of rights, plainly cannot change the inherent character of the game either as a local activity or as a sport. Otherwise, any local event, which is reported by the Press or by broadcasting and telecasting companies, would become an interstate activity. The fundamental

fallacy underlying the contention is the failure to recognize or acknowledge the inherent and controlling difference, from the standpoint of interstate activity or commerce, between the interstate reporting of a local event and the local event itself.

Gardella v. Chandler, 172 F. 2d 402 (hereinafter called the "Gardella case") furnishes no tenable support for Petitioner's contention.

In the *Gardella* case (on which Petitioner principally rests his contention as to the sale of broadcasting and telecasting rights), a Major League baseball player, who had been placed on an ineligible list for breaching his contract, brought an action for treble damages. The District Court dismissed the action on motion for lack of jurisdiction over the subject matter. (l. c. 403.) The Court of Appeals, by a vote of two to one, remanded the case for trial upon the issue of jurisdiction and, if the evidence should establish jurisdiction, upon the merits. Each of the three judges rendered separate opinions. The opinions of the two judges who voted to remand, do not agree upon a single principle of substantive law or upon any rule of law upon which a trial judge could base instructions to a jury. As hereinafter appears, this result was undoubtedly due to the facts that their opinions rest in large part upon matters which were not before the Court for decision and were not presented in briefs or oral argument.

Judge Chase, in his dissenting opinion, held that both the *Federal Club* case and applicable established legal principles required affirmance of the judgment. (172 F. 2d 402.) Judge Chase said in part:

> "Even the possible exception just mentioned exists only if the sale of these radio and television broadcast rights differs in some material way from the sale

of the exclusive right to send 'play-by-play' descriptions of the games interstate over telegraph wires, for that feature was present in the previous case before the Supreme Court. In each instance by what is called the *sale of rights the appellees made it possible for others* to transmit information interstate. *The playing of baseball games then created the subject matter* concerning which information was sent by symbols carried by telegraph wires and translated into words just as such play now creates the subject matter concerning which information is sent through the air by impulses which are transformed either into words or pictures. So far as I can perceive, the difference in the method of transmission is without significance.

"These appellees do not themselves broadcast anything nor do they do anything more by way of production of what is broadcast than was shown to have been done in the former case to 'produce' what was described. Since the sellers of the rights to broadcast through the air do only what the sellers of the rights to send descriptions over telegraph wires did in the former case I can find no sound basis on the facts for distinguishing that case from this. It seems to me to have decided the precise question here presented and that it controls our decision." (172 F. 2d 402, 404.)

Neither the reasonableness nor the validity of the player contracts or regulations was in issue in, or had any bearing upon, the question of jurisdiction over the subject matter of, the *Gardella* case. If the Court did not otherwise have jurisdiction over the subject matter of the statutory claim there alleged under the federal antitrust laws, the invalidity of the player contracts or regulations under State law (either conceded or assumed) could not create or support such jurisdiction. *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 483-4, 513; *Hunt v. Crumboch*, 325 U. S. 821, 826.

However, Judge Frank premised his opinion upon the hypotheses that the *Federal Club* case should be "distinguished, if possible" (l. c. 409); "that, if possible, they (the player contracts) should be deemed within the prohibitions of the Sherman Act" (l. c. 410); and that the *Federal Club* case had become "an impotent zombie" (l. c. 408-9). Proceeding upon such hypotheses, Judge Frank concluded that because decisions of this Court had sustained congressional power under the commerce clause expressly to regulate specific activities and practices (whether intrastate or interstate) under the Fair Labor Standards Act, the National Labor Relations Act and the Food and Drug Act, the player contracts or regulations should be held to be within the scope of the Sherman Act. (l. c. 414.) Judge Frank did not deal with the fact that those intrastate activities of the defendants did not in any way affect or restrain any line of interstate commerce.

Judge L. Hand concluded that the case should be remanded for trial with the burden on the plaintiff to establish that the sale of rights by Major League Clubs to transmit descriptions of their games by radio or television as well as by telegraph, together with any other interstate activities of the defendants, converted all of their activities into interstate commerce. (172 F. 2d 407.) This conclusion was based largely upon matters which were not raised or presented in briefs or oral argument, and the opinion rests, we submit, upon at least three basic errors.

First: The opinion ignored one ground of the *Federal Club* decision, namely, that the giving of professional baseball exhibitions is a sport and not trade or commerce.

Second: Although the only pertinent allegations of the *Gardella* complaint were that the Major League Clubs "sell for valuable consideration the right to broadcast play by play descriptions of the games over the radio and thus

across State lines, and some of them sell the right to broadcast the games by television" (l. c. 404), the opinion relies strongly upon an assumption that the Major League Clubs and those to whom they sold such rights were engaged in a common venture—in other words, that a contract of sale makes the vendor and vendee joint venturers. (172 F. 2d 407.) No such contention had been advanced; and it was principally upon this inadvertent and erroneous assumption that Judge Hand concluded that the sale of such rights might be material.

In a subsequent case, in which Judge Frank participated, Judge L. Hand stated that all members of the Court agreed "that the bare allegation in a complaint that the defendants make contracts with broadcasting and television companies will not support the jurisdiction of the Court." *Martin v. National League Baseball Club* (C. C. A. 2) 174 F. 2d 917, 918.

Third: The opinion relies upon an assumed analogy to a hypothetical situation in which a State line runs "between the diamond and the grandstand" and a conclusion that such a fortuitous circumstance would convert a baseball game into an interstate activity. (l. c. 407.) In so concluding, the opinion overlooked the opinions of this Court, squarely to the contrary, in *Hopkins v. United States*, 171 U. S. 578, 603, and *Anderson v. United States*, 171 U. S. 604, 612-613, which would have been called to the attention of the Court had such a theory been raised in briefs or on oral argument.

Clearly, a baseball game is inherently local in character; the player regulations relate directly to the employment of players to perform in these local baseball exhibitions; and the player regulations are neither intended to, nor do, restrain any line of interstate commerce. Plainly,

the decision in the *Federal Club* case rests upon sound principles; no subsequent factual change renders it anapplicable to the case at bar; and the sound principles upon which that case was decided remain wholly unimpaired under the subsequent decisions of this Court.

II.

THERE IS NO REAL OR SUBSTANTIAL CONFLICT BETWEEN THE DECISION BELOW AND GARDELLA v. CHANDLER, ET AL. (C. A. 2), 172 F. 2d 402 WITHIN THE MEANING AND PURPOSE OF THE APPLICABLE RULE OF THIS COURT.

1. In the *Gardella* case, the plaintiff was a Major League baseball player who had been placed on an ineligible list for breaching his player contract with a Major League Club popularly known as the New York Giants. The plaintiff in that case brought an action for treble damages, under the federal antitrust laws, against the New York Giants, the Baseball Commissioner, the Presidents of the National and American Leagues and the President of the National Association and alleged that the Major Leagues and their member clubs (including the New York Giants) sold rights to broadcast and telecast descriptions of their games in interstate commerce.

In the case at bar, the Petitioner does not allege that the Minor Leagues or clubs, in or for which Petitioner played or claims to have been qualified to play, sold rights to broadcast or telecast descriptions of their games or that any activities of the defendants or of any baseball clubs with respect to the sale of such rights had any effect whatsoever on the Petitioner. Instead, Petitioner claims to have been damaged solely by the "player regulations" with respect to the employment of players in the lower classifications of the Minor Leagues. (*supra*, pp. 5-6, 9.) Since the

decision below and the decision in the *Gardella* case were based upon wholly different facts with respect to the point upon which Petitioner claims them to be in conflict, there can be no conflict between the decisions within the meaning of Supreme Court Rule 38, Par. 5(b).

2. The purpose of, and the principle underlying the foregoing rule, is to secure uniformity in federal law by resolving conflicts between circuits upon sustantial principles of substantive law or rules of civil procedure which have not been authoritatively settled by this Court. As hereinbefore shown (*supra*, pp. 25-8), the decision in the *Gardella* case did not lay down any substantial principle of substantive law or rule of procedure; and the decision below squarely conforms with the decision of this Court in the *Federal Club* case. The principles of law involved have been authoritatively settled by this Court; and it is wholly unnecessary to grant certiorari in order to accomplish the purpose of the rule.

III.

PETITIONER'S CONTENTIONS, THAT THE DECISION BELOW IS IN CONFLICT WITH CERTAIN ALLEGED BELIEFS OF THE CONGRESS OF THE UNITED STATES, IS WITHOUT BASIS IN FACT OR LAW AND FURTHERMORE WOULD NOT BE A GROUND FOR ISSUING THE WRIT.

The third and fourth reasons assigned for allowance of the writ are that the decision below is in conflict with two alleged beliefs of the Congress of the United States. (Pet. 16-7.) Such alleged conflicts, did they exist, are not a ground for issuing the writ; but here the reasons so assigned are also without factual basis.

1. A view expressed in a report of a congressional subcommittee does not constitute a view of the Congress of the United States.

2. The view of a House Subcommittee, "that the Congress has jurisdiction to investigate and legislate on the subject of professional baseball," does not conflict either with the *Federal Club* case or the decision below. It may be assumed that the Congress can, if it so desires, regulate any interstate activities in which baseball clubs and their personnel engage and can also regulate their intrastate activities, if and to the extent that such regulation should be found necessary or appropriate to protect interstate commerce. (*Wickard v. Filburn* (1942), 317 U. S. 111; *NLRB v. Jones & Laughlin Steel Corp.* (1937), 301 U. S. 1, 29-32.) However, the existence of that power does not convert baseball games into interstate commerce or bring the giving of professional baseball exhibitions within the scope of the antitrust laws.

Nor is the view of a House Subcommittee, that, if otherwise desirable, it would be premature to enact any special legislation, dealing specifically with any of the activities in which baseball clubs or their personnel engage, in conflict with the decision in the *Federal Club* case or with the decision below.

IV.

THE PETITION DOES NOT PRESENT A QUESTION OF PUBLIC IMPORTANCE WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

The fifth reason assigned for allowance of the writ is seemingly that the petition presents a case of great public importance because eight treble damage actions are allegedly pending "against representatives of organized baseball" and those in professional baseball assert that if any of these actions (including the case at bar) is successful "the great American pastime cannot continue." (Pet. 17.)

Under Supreme Court Rule 38, par. 5(b) the public importance of the question sought to be presented is a

ground for issuance of the writ only where a Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court. In the case at bar the question of federal law, which Petitioner seeks to present, has already been decided by this Court in the *Federal Club* case; and the willingness of counsel to bring an action or numerous actions, challenging the prior settlement of a federal question by this Court, does not create a question of public importance.

Any currently pending litigation, which involves the status of the player regulations under the antitrust law, would be disposed of by denying the petition upon authority of the *Federal Club* case.

Indeed, so far as known to people in professional baseball, only seven actions for treble damages (including the three actions in which petitions for certiorari have been filed in this Court) are pending, of which five involve the player regulations and two do not. In four of the five actions which involve the player regulations, the principal counsel for plaintiff is the same as in the case at bar.

V.

ASSUMING ARGUENDO THAT THE DEFENDANTS' ACTIVITIES, WHICH ARE INVOLVED IN THE CASE AT BAR, ARE INTERSTATE TRADE AND COMMERCE, THE COMPLAINT DOES NOT STATE A CLAIM.

A. The Player Regulations, the Only Alleged Restraints Which Allegedly Damaged Petitioner, Do Not Restrain Commercial Competition.

The player regulations, which relate only to the employment of baseball players, do not in any way involve, or restrain, commercial competition. As stated in *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 495-7, the Sherman Act has never been held applicable to any case, whether or not involving labor activities, unless "some form of restraint upon commercial competition in the marketing of goods or services" was established, or in labor cases where illegal interference with production had prevented substantial interstate shipments, unless "the restrictions on shipments had operated to restrain commercial competition in some substantial way." This distinction between competition for labor and commercial competition has been consistently recognized and maintained. *Schatte v. International Alliance, et al.* (C. A. 9, 1950), 182 F. 2d 158, 167, cert. den. 340 U. S. 827; *Conference of Studio Unions, etc. v. Loew's Inc.* (C. A. 9, 1951), 193 F. 2d 51, cert. den. 342 U. S. 919; *Levering & Garrigues Co. v. Morrin* (1933), 289 U. S. 103; *United States v. Gold* (C. C. A. 2, 1940), 115 F. 2d 236, 238.

B. The Alleged Agreement Among Defendants as to the Terms and Conditions Upon Which They Will Employ Baseball Players, is Not Contrary to the Common Law or to the Sherman Act.

The gist of Petitioner's claim is that he has been damaged by an agreement among members of an association of employers, engaged in exhibiting professional baseball games, not to employ players except under the terms of a uniform player contract. Such agreements by employers regulating competition for employment services are clearly within the principles stated in the *Apex Hosiery* case; and this principle has been frequently applied in the Federal and State courts.*

While some of the cases (cited in the footnote) were decided under the common law and some under state anti-

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* *United States v. Gold*, *supra* (C. C. A. 2, 1940), 115 F. 2d 236, 238; *Schatte v. International Alliance, et al.*, *supra* (C. A. 9), 182 F. 2d 158, 167, cert. den. 340 U. S. 827; *Conference of Studio Unions, etc. v. Loew's, Inc.*, *supra* (C. A. 9), 193 F. 2d 51, cert. den. 342 U. S. 919; *Hunt v. Riverside Club*, 140 Mich. 538, 104 N. W. 40 (association of plumbers fixed wages of labor); *State v. Employers of Labor*, 102 Neb. 768, 169 N. W. 717 (association of all employers in Omaha combined to force open shop); *Trade Press Pub. Co. v. Moore*, 180 Wis. 449, 193 N. W. 507 (all Milwaukee newspaper publishers agreed to force open shop); *American Cloak & Suit Mfrs. Ass'n. v. Brooklyn Ladies' Garment Mfrs. Ass'n.*, 143 Misc. Rep. 319, 255 N. Y. Supp. 614 (employers' association to create and enforce labor standards); *Associated Hat Mfrs. v. Baird-Unteidt Co.* (1914), 88 Conn. 332, 91 Atl. 373 (holding manufacturers' association which forced open shop did not violate Sherman Act or common law); *Androff v. Building Trades Employers' Ass'n.*, 83 Ind. App. 294, 148 N. E. 203 (association limiting employees' pay); *Williams v. Quill*, 277 N. Y. 1, 12 N. E. 2d 547 (transit employers agreed to force closed shop); *Atkins v. W. & A. Fletcher Co.*, 65 N. J. Eq. 658, 55 Atl. 1074 (association intimidating and excluding certain workers); *City Trust, etc., Co. v. Waldhauer*, 47 Misc. Rep. 7, 13, 95 N. Y. Supp. 222, 225; *Forstmann & Huffman Co. v. United Front C. of T. Workers*, 99 N. J. Eq. 230, 237, 133 Atl. 202, 204, 205; *Goldfield Consol. Mines Co. v. Goldfield M. U. No. 220* (C. C. Nev.), 159 Fed. 500, 517, 518 (members of association combined to reduce wages); *Beck v. Railway Teamsters' Protective Union*, 118 Mich. 497, 517, 77 N. W. 13, 21.

trust statutes embodying the common law principle, all support the proposition; for it has long been settled that the Sherman Act prohibits only those restraints or monopolies which were unenforceable or illegal at common law. *Apex Hosiery Co. v. Leader* (1940), 310 U. S. 469, 498; *Standard Oil Co. v. United States* (1911), 221 U. S. 1, 58.

C. The Player Regulations, the Only Alleged Restraints Which Allegedly Damaged the Petitioner, Do Not Cause Any Injury to the Public.

The private statutory claim or right of action to recover treble the damages proximately caused by violations of the Sherman Act, was created to induce private persons to aid in enforcement of that Act, and was clearly incidental and subordinate to the protection of the public. Consequently any such private claim for treble damages must allege facts which, if proved, would establish that the alleged violations of the Sherman Act, by which the plaintiff was allegedly damaged, have caused substantial injury to the public.*

In support of his claims, Petitioner has alleged that assignments of his contracts at the end of the 1947 and 1948 seasons to Class A Clubs restricted his opportunity to advance in his calling as a professional baseball player, and that the option to renew or so-called "reserve" clause in his contracts prevented him from obtaining the fair value of his services in such calling. Plainly, these allega-

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* *Shotkin v. General Electric Co.* (C. C. A. 10), 171 F. 2d 236, 238-9; *Feddersen Motors v. Ward* (C. C. A. 10), 180 F. 2d 519, 521-2; *Citizens Pub. Co. v. Merchants & Manufacturers Ass'n.* (D. C. D. of C.), 83 Fed. Supp. 994, 997; *Riedley v. Hudson Car Co.* (D. C. Ky.), 82 F. Supp. 8, 10; *Glenn Coal Co. v. Dickinson Fuel Co.* (C. C. A. 4), 72 F. 2d 885, 889; *Myers v. Shell Oil Co.* (D. C. Cal.), 96 F. Supp. 670, 674; *Arthur v. Kraft-Phenix Cheese Corp.* (D. C. Md.), 26 F. Supp. 824, 825-6; *Abouaf v. Spreckels Co.*, 26 F. Supp. 830, 832-3.

tions concerning the player regulations, even if proved, would wholly fail to establish any injury to the public. It is not alleged, nor can it be inferred, that these alleged restraints have decreased the quantity or diminished the quality of professional baseball exhibitions to the public or have caused any increase in the prices charged the public for admission to such exhibitions.

D. The Subject Matter of Petitioner's Alleged Claims is Specifically Exempted from the Anti-trust Laws by Provisions of the Clayton and Norris-LaGuardia Acts.

The gist of Petitioner's claim is that he has been deprived of the reasonable value of his services and of opportunities for promotion as a professional baseball player by an agreement among an association of employers to use a uniform contract of employment and not to employ persons, including Petitioner, who fail or refuse to abide by the provisions of the uniform contract. The uniform contract relates wholly to the employment of persons to supply personal services or labor. Both the subject matter and the alleged agreement among the employers are specifically exempted from the anti-trust laws by the provisions of the Clayton and Norris-LaGuardia Acts.

Section 6 of the Clayton Act (15 U. S. C. 17) declares:

> "The labor of a human being is not a commodity or article of commerce."

This Court has expressly held that Section 6 of the Clayton Act exempts restraints regarding employee services from the operation of the anti-trust laws. *Apex Hosiery Co. v. Leader*, 310 U. S. 469. In that case this Court stated:

"* * * Since the enactment of the declaration in § 6 of the Clayton Act [15 U. S. C. § 17] that 'the labor of a human being is not a commodity or article of commerce * * * nor shall such (labor) organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in the restraint of trade under the antitrust laws,' it would seem plain *that restraints on the sale of the employee's services to the employer, however much they curtail the competition among employees, are not in themselves combinations or conspiracies in restraint of trade or commerce under the Sherman Act.*" (l. c. 502-3.)

This Court has also held that the Sherman Act, Section 20 of the Clayton Act and the Norris-LaGuardia Act are three interlacing statutes which must be read and construed together. *United States v. Hutcheson*, 312 U. S. 219. The language of Section 20 of the Clayton Act, the language and legislative history of the Norris-LaGuardia Act and the applicable court decisions establish that the foregoing principle laid down in the *Apex* case is equally applicable to agreements among employers and employers' associations and to resulting disputes between employers and an employee.

Section 20 of the Clayton Act (29 U. S. C. 52) provides in part as follows:

"No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or *between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment*, unless necessary to prevent irreparable injury to property, or to a property

right, of the party making the application, for which injury there is no adequate remedy at law, * * *.

"And no such restraining order or injunction shall prohibit *any* person or persons, *whether singly or in concert* * * * from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; * * * *nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.*"

Manifestly, Petitioner's claim falls within the precise terms of the quoted statutory language.

Petitioner's claim also comes clearly within the provisions of Subsections (a) and (c) of the Norris-LaGuardia Act (29 U. S. C. § 113 (a) and (c)). Subsection (a) reads in part:

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) *between one or more employers or associations of employers and one or more employees or associations of employees;* * * *."

The report of the Senate Committee on the Norris-LaGuardia Act stated:

"Moreover, it will be observed that this section (Section 6), as do most all of the other prohibitive sections of the bill, *applies both to organizations of labor and organizations of capital.* The same rule throughout the bill, wherever it is applicable, applies both to employers and employees, and also to organizations of employers and employees." (Sen. Rep. No. 163, 72nd Cong., 1st Sess. 19 (1932).)

In *United States v. San Francisco Electrical Contractors Ass'n.* (N. D. Cal.), 57 F. Supp. 57, the Government brought suit under the Sherman Act against electrical contractors' associations charging that they and the unions had conspired to fix prices in electrical appliances and installations. One of the grounds on which the court dismissed the complaint was that agreements between the associations and the unions, imposing restrictions as to employment of labor, were immunized by the impact of the Clayton and Norris-LaGuardia Acts on the Sherman Act. (l. c. 60-1.)

The subject of Petitioner's claim is, as we have seen (*supra*, pp. 6-9), personal service or labor, and it is clear that the provisions of the Clayton and Norris-LaGuardia Acts discussed above and their construction and application by the courts, alone establish that the Complaint wholly fails to state a statutory claim under 15 U. S. C. 15.

VI.

PETITIONER HAS NO LEGAL INTEREST OR STANDING TO MAINTAIN HIS PETITION FOR A WRIT OF CERTIORARI.

No one has a right or standing to invoke a judicial determination of a question where and when its judicial determination will not affect his legal rights. Upon the same principle, Petitioner has no right or standing to maintain a petition for a writ of certiorari to review one of the two grounds upon which the judgment below rests. *New Orleans v. Emsheimer*, 181 U. S. 153. Even if the Court of Appeals had erred in holding that the District Court lacked jurisdiction over the subject matter of the action, the judgment below would still be fully supported by the holding that the Complaint fails to state a claim upon which relief can be granted; and no legal interest of Petitioner could

be affected by a review of the only question which the Petition presents.

CONCLUSION.

For each and all of the reasons hereinbefore stated, the petition should be denied.

Respectfully submitted,

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